EXHIBIT "K"

REPRESENTATIONS TO THE CONGRESS OF THE UNITED STATES AND TO THE UNITED STATES TREASURY OPPOSING THE REPEAL OF SECTION 911 OF THE INTERNAL REVENUE CODE

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REPRESENTATIONS TO THE CONGRESS OF THE UNITED STATES AND TO THE UNITED STATES TREASURY OPPOSING THE REPEAL OF SECTION 911 OF THE INTERNAL REVENUE CODE

The United States is the only major country in the world which uses citizenship as the jurisdictional basis for the taxation of individuals. Most countries tax only residents. Because of this, the United States Congress has found it necessary since the early days of the income tax to make special provision for United States citizens living abroad.

The Revenue Act of 1926 first excluded foreign-source earned income from the taxable income of U.S. citizens living abroad. These provisions, designed as an incentive to encourage foreign trade and investment by U.S. business, have been repeatedly amended over the years to eliminate real or imagined abuses and are now contained in section 911 of the Internal Revenue Code. In 1953 and 1962 dollar limitations were placed on the amount of foreign earned income excludable. These amounts have been scaled down in subsequent revisions and no provision has been made for up-dating these dollar limits to take account of inflation. After a half-century of piecemeal revisions designed to limit the application of the original provisions, it is appropriate to re-examine section 911 to determine if it still serves a useful purpose.

Who Benefits from Section 911?

The exclusion provided by section 911 is not only limited in amount but applies to a narrow group of taxpayers and to a specific class of income. It covers only those United States citizens who have been living abroad for 17 out of 18 consecutive months or who are resident in a foreign country for an entire tax year. If such persons have rendered personal services abroad, section 911 permits them to exclude from gross income for U.S. tax purposes up to $20,000 of their remuneration for such services. The $20,000 is increased to $25,000 where a U.S. citizen has been a *bona fide* foreign resident for three consecutive years.

Section 911 does not permit exclusion of any dividends, interest, rents, royalties or capital gains. It does not give relief from any form of U.S.

taxation other than taxes on income. It does not permit exclusion of compensation for personal services performed in the United States.

The exclusion does not apply to certain classes of United States citizens abroad, such as government employees and the military, who have advantages not available to the class of taxpayers to which section 911 applies. Among these advantages is exemption from foreign income tax for certain government employees, exclusion of cost of living allowances (under section 912 of the Code) and special capital gains tax treatment on the sale of homes of military personnel (under section 1034 (h) of the Code).

How Many Taxpayers Benefit from Section 911?

In 1970, the United States civilian population living abroad was 680,060. This was a substantial decline from the 761,892 reported as living abroad in 1960. Most of the overseas Americans are federal employees and their dependants to whom section 911 does not apply. To determine who does benefit from section 911, we have considered the 'other citizens' category as defined in the 1970 Census Bureau report.[1] These 'other citizens' include private businessmen, employees of foreign governments and international agencies, missionaries, religious workers, students and their families. In 1970 the 'other citizens' were 236,336 of the 680,060 – say, 35% of the total. Of these citizens 16 years old and over, approximately 70,000 reported that they were employed, representing only 10% of the Americans living overseas in 1970.[2] Among the 70,000 employed persons, 2,703 were 65 years old or over and 422 were between 16 and 18 years old.[3] 39,549 of these 70,000 employed 'other citizens' abroad were reported as residing in the U.S. in 1965.[4]

There were only 16 countries[5] (almost all industrialized, high-tax countries) in which 1,000 or more employed 'other citizens' above the age of 16 were living abroad. In order of the number of United States citizens living in those countries, they were Germany, England, Japan, Mexico, the Republic of South Africa, Canada, Switzerland, Brazil, Australia, Venezuela, France, the Philippines, Peru, Italy, India and Argentina.

[1] "Americans Living Abroad", a report published by the Bureau of the Census of the U.S. Department of Commerce (number PC(2)-10A) as part of the 1970 census of population.
[2] Ibid., Table 5
[3] Ibid., Table 21
[4] Ibid., Table 24
[5] Excluding Vietnam

A detailed examination of the 'other citizens' living in the United Kingdom (England, Scotland and Wales) shows 3,209 both employed and 16 years old and over, who were approximately 19% of the 16,511 'other citizens' in the United Kingdom. Only an inconsequential number (just over 2%) of these 16,511 individuals were living in the United Kingdom or some other foreign country in 1965. Almost all lived in the United States in 1965. Therefore, the full section 911 exclusion had been only recently available to most of these citizens, only a small number of whom were employed and could therefore exclude any income. Of these 16,511 'other citizens' in the United Kingdom, 178 worked for a state or foreign government or international organization, 173 were self-employed and 2,858 had a private wage or salary. Therefore, less than one-fifth of the individuals (approximately 3,000 persons) might qualify for the section 911 exclusion.[1]

With these very limited numbers of taxpayers who can benefit from section 911, and with a maximum U.S. tax rate of 50% on earned income, the loss of revenue to the United States Treasury from section 911 is insignificant, even assuming U.S. citizens abroad were not liable to foreign taxes. This, however, is far from being the case.

Tax Burdens of Employment Abroad

Foreign income taxes (particularly in the 16 countries listed above) are in many cases higher than those in the United States. Moreover, most foreign countries collect a significantly smaller share of their tax revenues from individual income taxes and a larger share from taxes on consumption than does the U.S. These foreign sales taxes are neither a credit against U.S. income taxes under section 901 of the Code nor deductible in determining U.S. taxable income. This creates a situation where, in many instances, the U.S. citizen employed abroad bears a heavier tax burden than his counterpart at home. The situation is exacerbated where employment abroad creates financial burdens for the employee (due, for example, to higher foreign living costs, the necessity of sending children to private schools offering an American curriculum and the expenses of living far from family and friends) which, if compensated for by the employer, create additional taxable income for the employee. This is discussed more fully at pages 8 through 13.

The analysis below will demonstrate how these burdens affect the typical U.S. citizen employed abroad.

[1] "Americans Living Abroad", Table 25

Foreign Income Taxes

A comparison of income taxes paid in the United States with those paid (1974-75) in the countries ranking 2nd, 1st, 4th and 11th respectively in the numbers of employed 'other citizens' abroad 16 years of age and over reported in the 1970 Census reveals that all but France have higher income taxes than the United States (see Chart A).

CHART A

Annual Earned Income (U.S. $)	*U.S. Taxes**	*UK** A****	*B****	*C****	*Germany***	*Italy***	*France***
10,000	834	2,179	645	1,520	1,172	1,113	431
15,000	2,260	3,869	1,520	3,336	2,180	2,298	1,127
20,000	3,540	6,106	2,647	5,678	3,703	3,705	2,075
25,000	5,020	8,870	4,086	7,625	5,722	5,189	3,245
30,000	6,740	12,053	5,678	10,437	7,846	6,739	4,647
40,000	10,790	18,622	8,562	16,610	12,495	10,062	7,524
50,000	15,560	25,920	12,460	22,835	17,377	13,601	10,582
60,000	20,710	34,083	16,610	29,060	22,520	17,344	13,818
100,000	43,380	67,282	33,210	53,960	44,317	33,252	29,679

* For the $10,000 salary Optional Tax Table 4 for returns claiming four exemptions and not itemizing deductions (5-14-75), married filing joint return, has been used. Salaries $15,000 through $100,000 are shown after the standard deduction but before the personal exemption of $3,000. The Schedule for married individuals filing joint returns has been used.

** Salaries shown are after standard deductions, pension contributions and social security in all cases except Germany and Italy where amounts are shown before social security (16% in Germany—10% in Italy) married—two children.

*** The UK has a graduated income tax, commencing with a minimum rate of 35% (on roughly the first $10,000 of taxable income). However, certain taxpayers resident but not domiciled in the UK receiving 'foreign emoluments' – that is salaries paid by employers not resident in the UK – are entitled to deduct one-half of such emoluments for UK tax purposes, or one-quarter after they have been resident in the UK for nine years out of the previous ten years of assessment. Column A shows the normal rate of UK tax. Columns B and C show the UK tax after deduction of one-half and one-quarter of 'foreign emoluments', assuming all taxable income is represented by such emoluments.

Direct and Indirect Foreign Taxes

Charts B, C and D are based on the OECD study, *Revenue Statistics of OECD Member Countries 1968-70*, which illustrates the heavy reliance by most foreign countries on indirect rather than direct taxes, compared with the U.S.

CHART B

Total taxation to GNP at market prices (average 1968-70)

(*a*) Excluding Social Security		(*b*) Including Social Security	
1. Denmark	35.6	1. Sweden	43.0
2. Sweden	34.8	2. Netherlands	39.7
3. United Kingdom	31.6	3. Denmark	38.7
4. Norway	29.3	4. Norway	38.4
5. Finland	28.5	5. United Kingdom	36.6
6. Canada	27.8	6. France	36.3
7. Ireland	27.4	7. Austria	35.8
8. Iceland (2)	26.7	8. Germany	34.0
9. Austria	26.6	9. Belgium	33.8
10. Netherlands	25.5	10. Finland	32.8
11. Australia	24.4	11. Luxembourg (1)	32.4
12. Belgium	24.0	12. Canada	30.2
13. Germany	23.2	13. Italy	30.1
14. Luxembourg (1)	22.9	14. Ireland	29.8
15. United States	22.7	15. Iceland (2)	28.6
16. France	21.8	16. United States	27.9
17. Greece (1)	20.1	17. Greece (1)	26.3
18. Italy	19.2	18. Australia	24.4
19. Switzerland	18.3	19. Switzerland	21.5
20. Turkey	17.4	20. Portugal	21.1
21. Portugal	16.5	21. Turkey	20.4
22. Japan	15.8	22. Japan	19.4
23. Spain	11.8	23. Spain	19.2

(1) Average of 1968 and 1969 only.
(2) 1969 only.

In 1970, the United Kingdom derived 29.8% of its total tax revenue from taxes on goods and services, compared with 19% for the United States. The United Kingdom received only 31.4% of its total tax revenue from taxes on households and institutions, compared with 34.4% for the United States; 25.0% came from other taxes, compared with 27.8% for the United States, as shown in Chart D. Total taxation was 31.6% of the gross national product of the United Kingdom (36.6% including social security contributions), compared with 22.7% (or 27.9%) in the United States, as shown in Chart B. Taxes on goods and services represented 10.9% of the gross national product of the United Kingdom, but only 5.3% of the United States GNP, and taxes on the income of households represented 11.5% of the gross national product of the United Kingdom, compared with 9.7% in the United States, as shown in Chart C.

These charts also reveal the greater reliance on indirect taxation in Germany, Japan, Canada, France and Italy. For example, France received only 11% of its total tax revenues from taxes on households and institutions. These countries rank 1, 3, 6, 11 and 14 respectively in the list of 16 countries with more than 1,000 employed 'other citizens' of the United States 16 years old and over reported in the 1970 census.

CHART C

Individual taxes as a percentage of GNP at market prices (average 1968-70)

	Taxes on Goods and Services	*Taxes on Income and Profits paid by Households*	*Social Security*	*Other Taxes (including corporate income taxes)*
Australia	7.9	8.8	—	7.7
Austria	13.5	7.4	9.2	5.7
Belgium	12.3	8.3	9.8	3.4
Canada	10.1	9.0	2.4	8.7
Denmark	15.5	16.5	3.1	4.6
Finland	14.1	11.3	4.3	3.1
France	13.0	4.0	14.5	4.8
Germany	10.4	8.7	10.8	4.1
Greece (1)	12.1	n.a.	6.2	17.9
Iceland (2)	17.2	n.a.	1.9	9.5
Ireland	15.8	5.3 (1)	2.4	5.9
Italy	11.5	3.4	11.0	4.2
Japan	4.7	4.3	3.6	6.8
Luxembourg (1)	8.0	7.7	9.5	7.2
Netherlands	10.5	10.5	14.2	4.5
Norway	14.2	11.5	9.2	3.6
Portugal	8.8	n.a.	4.6	7.7
Spain	6.8	2.1	7.4	2.9
Sweden	12.8	19.0	8.2	3.0
Switzerland	6.5	7.9	3.2	4.0
Turkey	9.5	4.5	3.0	3.3
United Kingdom	10.9	11.5	5.0	9.2
United States	5.3	9.7	5.2	7.7

(1) 1968 and 1969 only
(2) 1969 only

Germany, Japan, Canada, France and Italy all obtain a higher percentage of tax revenues on goods and services and a lower percentage from taxes on incomes of households than does the United States (see Chart D). All received a lower percentage of their gross national product from their taxes on the income on households than did the United States. Only Japan obtained a lower percentage of its gross national product from its taxes on goods and services than the United States (see Chart C). Only Japan received a lower percentage of its gross national product in total tax revenue (including social security contributions) than did the United States. This information shows

CHART D

Individual taxes as a percentage of total taxation (Average 1968-70)

Taxes on Goods and Services		*Taxes on Incomes and Profits paid by Householders and Institutions*	
1. Iceland (2)	60.1	1. Sweden	44.1
2. Ireland	53.0	2. Denmark	42.5
3. Turkey	46.7	3. Switzerland	36.6
4. Greece (1)	46.1	4. Australia	36.1
5. Finland	42.9	5. USA	34.4
6. Portugal	41.7	6. Finland	34.7
7. Denmark	40.2	7. UK	31.4
8. Italy	38.1	8. Norway	29.8
9. Austria	37.8	9. Canada	29.0
10. Norway	36.7	10. Netherlands	26.4
11. Belgium	36.5	11. Germany	25.6
12. France	35.8	12. Belgium	24.6
13. Spain	35.7	13. Luxembourg (1)	23.6
14. Canada	33.0	14. Turkey	22.1
15. Australia	32.4	15. Japan	21.9
16. Germany	30.5	16. Austria	20.6
17. Sweden	29.9	17. Ireland (1)	18.4
18. UK	29.8	18. Italy	11.2
19. Switzerland	27.2	19. France	11.0
20. Netherlands	26.5	20. Spain	11.0
21. Luxembourg (1)	24.6	21. Greece	n.a.
22. Japan	24.0	22. Portugal	n.a.
23. USA	19.0	23. Iceland	n.a.

CHART D (*continued*)

Social Security		*Other Taxes (including corporate income taxes)*	
1. France	40.0	1. Portugal	36.4
2. Spain	38.4	2. Japan	35.5
3. Italy	36.3	3. Iceland (2)	33.3
4. Netherlands	35.8	4. Australia	31.5
5. Germany	31.7	5. Greece (1)	30.3
6. Luxembourg (1)	29.3	6. Canada	30.0
7. Belgium	28.9	7. USA	27.8
8. Austria	25.6	8. UK	25.0
9. Norway	23.8	9. Luxembourg (1)	22.3
10. Greece (1)	23.6	10. Switzerland	21.2
11. Portugal	21.9	11. Ireland	19.9
12. Sweden	19.1	12. Turkey	16.4
13. Japan	18.6	13. Austria	16.0
14. USA	18.6	14. Spain	14.9
15. Switzerland	15.0	15. Italy	14.4
16. Turkey	14.8	16. France	13.2
17. UK	13.8	17. Germany	12.2
18. Finland	13.2	18. Sweden	11.9
19. Ireland	8.1	19. Netherlands	11.3
20. Denmark	7.9	20. Belgium	10.0
21. Canada	7.0	21. Norway	9.7
22. Iceland (2)	6.6	22. Finland	9.5
23. Australia	—	23. Denmark	9.4

(1) 1968 and 1969 only
(2) 1969 only

conclusively that most of the countries where the largest numbers of employed Americans reside abroad rely on indirect taxes as a source of revenue to a much greater extent than in the U.S. – indirect taxes which are neither available for credit against U.S. income taxes under section 901 of the Code nor deductible in determining U.S. taxable income.

It is therefore demonstrably true that '... the average American resident overseas probably pays much more in foreign income and consumption taxes combined than he would have paid on the same amount of earnings had he remained in the United States'.[1]

Limited Effectiveness of the Foreign Tax Credit

In its Report on the Tax Reform Act of 1975, the House Committee on Ways and Means, in recommending repeal of section 911, stated that the exclusion '... provides a tax advantage to those U.S. citizens who live and work abroad compared with those who live and work in the United States ...' and that, moreover, '... where a foreign tax is paid by the U.S. citizen, that tax is creditable directly against any U.S. tax that might otherwise exist on income above the ... excludable limits.'[2] As we have shown, this alleged 'double benefit' enjoyed by Americans abroad does not exist. The exclusion does not place Americans resident abroad at an advantage, since the excluded income is taxed (through direct and indirect taxes) by the country of their residence, and generally at higher rates than those prevailing in the United States. The foreign tax credit applies only to foreign income taxes and not to indirect taxes. It should also be noted that the structure of taxation varies enormously among those countries having at least 1,000 employed 'other citizens' of the United States who were 16 years old and over in the 1970 census.

A few examples should suffice:

(1) Japan's income tax (as of 1972) contained progressive rates from 10% to 75% on taxable income. There are also stamp duties, ad valorem taxes and 'inhabitants' taxes, among others.

(2) Mexico imposes an income tax that may be a tax on labor, a tax on profits from capital, or a global tax on income from both sources, against which the taxes on income from labor and on profits from capital are credited.

[1] Brainard L. Patton, Jr., *United States Individual Income Tax Policy as it Applies to Americans Resident Overseas*, 1975 Duke Law Journal, No. 3, p. 691, & p. 698.
[2] Report No. 94-658, 94th Congress, First Session, November 12, 1975, at p. 200.

(3) Brazil imposes a progressive income tax on individuals on the basis of eight schedules, each with its special rules on deductions. The income tax begins with a rate of 3% and supplements other taxes, including a tax on the circulation of goods.

These complicated and unfamiliar tax structures make it difficult for the U.S. citizen abroad to obtain full credit for the 'income' taxes paid by him. This is one of many ways in which the foreign tax credit may fail to prevent the imposition of double taxation on Americans resident abroad.

The original foreign tax credit legislation of 1918 set no quantitative limit on the credit which could be taken for foreign taxes; foreign income taxes could be offset against U.S. tax regardless of their amount. In 1921, a limiting provision was enacted (Revenue Act of 1921, section 222 (a) (5)) to prevent the tax credit from reducing U.S. taxes on income from sources within the United States. These limitations are now found in section 904 of the Code. The U.S. tax credit structure is designed to ensure that foreign taxes at higher-than-U.S. rates on foreign-source income do not reduce U.S. taxes on U.S. income and, conversely, that payment of foreign taxes at lower-than-U.S. rates on foreign source income leaves the U.S. free to collect additional tax on such income to the extent it has not already been taxed at its source.[1]

But most foreign countries tax their residents on their *world-wide* income – as, indeed, does the U.S. in the case of aliens resident in the U.S. The limitations on the availability of the U.S. tax credit mean that, in the case of an American taxed on his world-wide income by his country of residence, his U.S. source income suffers a double tax, unless he receives a foreign tax credit in his country of residence.

Foreign Living Costs

Many foreign capitals (particularly in Europe) have significantly higher living costs than major cities in the United States. The Bureau of Labor Statistics of the U.S. Department of Labor provides information on living costs for non-government American employees living abroad, based upon the U.S. Department of State Indexes of Living Costs Abroad. This information can be used to determine the degree and type of allowances and differentials to be paid to U.S. employees posted overseas by their companies. Using Washington, D.C., as a base

[1] Elisabeth A. Owens, *The Foreign Tax Credit*, International Program in Taxation, Harvard Law School, Cambridge, Mass., 1961 p. 198 *et seq.*

of 100, the Index for October, 1975 shows the relative cost of living in the cities listed below.

City	*Department of State Index*
Brussels	133
Frankfurt	165
London	119
Paris	170
Rome	123
Stockholm	163

Apart from the additional burden provided by higher foreign living costs, there are the financial burdens imposed by the necessity of obtaining housing on temporary, and generally unfavourable, terms, the necessity of providing children with private education where local schools do not match American standards, costs of converting household appliances, storage charges and the additional costs of home leave and vacations to visit family and friends in the United States. Efforts by companies to make allowances for these costs result in higher U.S. taxable income, and often lift an employee into an entirely higher tax bracket.

Comparing a U.S. Citizen Resident in England with one Resident in the U.S.

The United Kingdom may serve as an example of the local tax burden on a U.S. citizen posted abroad.

Following the pattern established in the European Economic Community, the United Kingdom has adopted a Value Added Tax, a tax on consumption of both goods and services. Current United Kingdom rates are 8% and 12½%. The 12½% rate applies to such domestic goods as electric appliances, coffee percolators, refrigerators, washing machines and spin and tumble dryers and freezers (as well as the repair of such equipment). This tax is similar to the sales tax imposed by various U.S. states but is wider in its application. Another indirect tax is the substantial real estate tax in the form of 'rates' paid to local government which, the Internal Revenue Service maintains, is neither creditable nor deductible for U.S. tax purposes. A third indirect tax is the gasoline tax. Not only is the price of gasoline substantially higher in the United Kingdom, but it bears an even higher percentage of tax.

Let us assume that a married man with two children under the age of eleven, earning a salary of $40,000 a year and having no other source of income, is resident in the United Kingdom and files a joint return in the United States. His tax bills (at 1975 rates) in both countries (including an estimate of indirect taxes in the United Kingdom) are shown in Charts E and F, respectively.

CHART E

UK taxes under the Unified System

$40,000=£20,000 (exchange rate $2.00)	£20,000.00
Personal exemptions=955 & 2 × 240	1,435.00
	18,565.00
Deductions=(Mortgage interest)	3,250.00*
	15,315.00
Income tax (at rates scaled from 35% to 75%)	£8,111.25. ($16,222.50)
	Rates £1,000 ($2,000)
	VAT £1,200 ($2,400)
	$20,622.50

As noted above, if the U.S. citizen remains domiciled in the U.S. and his entire income consists of wages paid by a foreign employer, he may be entitled to an exemption for 50% or 25% of these earnings for UK tax purposes (Finance Act, 1974).

If only half of his earned income of £20,000.00. were taxed in England £1,916.75 ($3,833.50) would be paid in income tax.

*Section 19 of the Finance Act 1974 severely restricted reliefs for private borrowings. As a general rule relief will be given only on interest on a mortgage up to £25,000 and where the property mortgaged is a principal place of residence.

CHART F

(A) U.S. taxes with exemption and credit

$40,000	
-20,000	§ 911 exemption
20,000	
7,800	Deductions
12,200	
3,000	Personal exemptions 750 × 4=3,000
$9,200	U.S. taxable income
U.S. tax $1,644	

(Taxable income from sources outside the U.S. is 20,000 – 7,800 i.e.

$$\frac{\$12,200}{\$12,200} \times 1,644 = \$1,644$$ limitation of credit for foreign taxes)

Deductions are £3,250 ($6,500) mortgage interest, $300 other interest, and $1,000 medical and dental expenses. As the credit limitation is exceeded by UK income taxes, no U.S. taxes will be paid.

CHART F (*continued*)

(B) U.S. taxes without exemption but with credit

$40,000	
7,800	Deductions
32,200	
3,000	Personal exemptions
$29,200	U.S. taxable income
U.S. tax $7,568	

(Taxable income from sources outside the U.S.

$\frac{\$32,200}{\$32,200} \times 7,568 = \$7,568$ limitation of credit for foreign taxes)

Similarly, as in A, no U.S. taxes will be paid. However, if English income tax were paid on only one-half of the earned income, U.S. tax would be paid in an amount $7,568 – $3,833.50 = $3,734.50, and in addition UK rates and VAT, for which no U.S. tax relief is available, in a total amount of $4,400.00, would have been paid.

If the U.S. citizen were working in the U.S. and his deductions of $7,800 remained and the rates of $2,000 were recognised as the real estate taxes they are and the $2,400 paid in VAT were paid as a State sales tax, then he would pay only $5,948 in U.S. taxes.

$40,000	
12,200	(Deductions 7,800+2,000+2,400=12,200)
27,800	
3,000	Personal exemptions
$24,800	Taxable income
U.S. tax $5,948.	

Thus, the U.S. citizen resident in the UK pays $11,968 in total taxes ($7,568 + indirect taxes of $4,400) compared with only $7,568 if he were living in the United States. Even if foreign indirect taxes were deductible his total taxes would still be $10,348.

Summary

The available statistics reveal that:

(1) *Only a small number of United States citizens living abroad qualify for relief from U.S. taxes under section 911 of the Internal Revenue Code.* In the UK, which ranks second among those countries having U.S. citizens falling into the 1970 census category of 'other citizens' employed abroad who are 16 years old and over, the total number of taxpayers who might claim section 911 relief is approximately 3,000.

(2) Of these 16 foreign countries, *nearly all are industrial countries none of which can be regarded in any sense as a 'tax haven'.*

(3) In those countries where income tax is similar to or higher than the United States, *even if section 911 were to be repealed U.S. citizens would pay little or no additional federal tax, to the extent the foreign tax credit applies. Where the foreign tax credit does not apply, these citizens will often pay tax twice on the same income,* because foreign indirect taxes, unlike United States indirect taxes, cannot be deducted from taxable income for U.S. tax purposes.

(4) In the case of those countries with rates of income tax lower than the United States, the increased revenue to the U.S. from the repeal of section 911 still would not be great. The maximum U.S. tax rate on earned income is 50%. If section 911 were repealed and no foreign tax were paid (a 'never-never' case), the maximum increase in revenue available to the United States Treasury would be $10,000 (or $12,500) per taxpayer. This would arise at most for 35% of the U.S. citizens living abroad in 1970, and would in general apply only for the much smaller percentage of U.S. citizens employed abroad.

This being the case, what are the arguments for the retention of section 911?

Why Should Section 911 be Retained?

(1) The average American working abroad today probably pays a higher total tax bill than his counterpart living in the U.S. To some extent this is due to inequities and anomalies in the U.S. tax system itself: to the fact that the U.S. taxes its citizens residing abroad; to the fact that the indirect taxes on which many foreign countries rely heavily for revenue are neither creditable nor deductible for U.S. tax purposes; and to the application of source-of-income rules to limit the availability of the U.S. tax credit.

(2) There are other disadvantages which a citizen abroad suffers merely because he is abroad. One of the most important is the cost of education of his children. A large number of Americans who would not consider private schools for their children in the United States are compelled to resort to private schools abroad due to incompatible curriculum requirements for children intending to complete their education in the U.S., language difficulties and different systems of education. There are other costs of adapting to local conditions which may be substantial. To the extent these additional costs are reimbursed by his employer, they increase an employee's taxable income for United States tax purposes.

(3) Not only is it fundamentally inequitable that Americans should pay a tax penalty for serving overseas, but the U.S. cannot at present afford to create a fiscal 'Berlin Wall' in this way. United States trade, which was the underlying reason for granting relief from U.S. taxes for income earned abroad, is as important now as it was in 1926 – more important, perhaps, in view of the enormously increased amount of U.S. foreign investment and the increased and increasing importance of exports to the U.S. balance of payments. It is universally recognized that there is a significant relationship between foreign direct investment and foreign trade. A large share of total U.S. exports is directed to foreign affiliates of U.S. firms. Foreign direct investment also stimulates U.S. exports in other less direct ways, by increasing the awareness of U.S. products and technology and stimulating demand for them. It is obvious that American firms would not invest abroad if they could not find personnel willing to work abroad.

Recommendations

Section 911 of the Internal Revenue Code provides some relief from a situation which, without such relief, would be even more inequitable to the U.S. taxpayer than it is now. Section 911 as it now stands may not be a perfect instrument for granting this relief. In particular, the $20,000 and $25,000 limitations are entirely arbitrary, and subject to erosion by inflation. However, section 911 should be retained, or some similar form of relief conferred, at least until Congress is prepared to undertake a comprehensive reform of the tax system as it applies to non-resident citizens.

It is urged that the following alternatives be considered:

(1) Retention of section 911 as it now stands, with adjustment to take account of inflation since 1962.

(2) Replacement of section 911 with an exemption on a formula basis, so that a specified percentage of gross income would qualify for exclusion.

(3) Exclusion from U.S. taxable income of reimbursements by U.S. employers to their U.S. employees abroad which are designed to compensate for the additional financial burden of foreign posting.

(4) At the very least, full relief for local indirect taxes, on which many countries rely in place of income taxes, should be given.

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